

By Senator Garcia

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1 A bill to be entitled
2 An act relating to the sale or lease of a public
3 hospital; amending s. 155.40, F.S.; requiring that the
4 sale or lease of a county, district, or municipal
5 hospital to a for-profit or not-for-profit Florida
6 corporation receive prior approval by the Attorney
7 General; requiring the governing board to first
8 determine whether there are any qualified purchasers
9 or lessees of the hospital before considering whether
10 to sell or lease the hospital; defining the term "fair
11 market value"; requiring the governing board to put in
12 writing the facts and findings to justify the
13 governing board's decision to sell or lease the public
14 hospital to a third party; detailing the issues that
15 the governing board must address in order to sell or
16 lease the hospital; setting forth the procedures that
17 must be followed by the governing board to gain the
18 approval of the Attorney General to sell or lease the
19 hospital; authorizing the Attorney General to employ
20 independent consultants to determine the fair market
21 value of the proposed sale or lease; authorizing
22 interested persons to file a statement in opposition
23 to the sale or lease of the hospital; specifying the
24 criteria the Attorney General must consider when
25 deciding whether to approve or deny the proposed sale
26 or lease of the hospital; requiring the Attorney
27 General to publish his or her final decision in the
28 Florida Administrative Weekly; amending s. 395.3036,
29 F.S.; conforming a cross-reference; providing an

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30 effective date.

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32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Section 155.40, Florida Statutes, is amended to
35 read:

36 155.40 Sale or lease of county, district, or municipal
37 hospital; effect of sale.—

38 (1) In order that citizens and residents of the state may
39 receive quality health care, any county, district, or municipal
40 hospital organized and existing under the laws of this state,
41 acting by and through its governing board, shall have the
42 authority to sell or lease the ~~such~~ hospital to a for-profit or
43 not-for-profit Florida corporation, and enter into leases or
44 other contracts with a for-profit or not-for-profit Florida
45 corporation for the purpose of operating and managing the ~~such~~
46 hospital and any or all of its facilities of whatsoever kind and
47 nature. The term of any ~~such~~ lease, contract, or agreement and
48 the conditions, covenants, and agreements to be contained
49 therein shall be determined by the governing board of the ~~such~~
50 county, district, or municipal hospital. The governing board of
51 the hospital must find that the sale, lease, or contract is in
52 the best interests of the public and shall ~~must~~ state the basis
53 of such finding. If the governing board of a county, district,
54 or municipal hospital decides to lease the hospital, it must
55 give notice in accordance with paragraph (4) (a) or paragraph
56 (4) (b). Any sale or lease of the hospital is subject to approval
57 by the Attorney General.

58 (2) Any ~~such~~ lease, contract, or agreement made pursuant

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59 hereto shall:

60 (a) Provide that the articles of incorporation of the ~~such~~
61 for-profit or not-for-profit corporation be subject to the
62 approval of the board of directors or board of trustees of the
63 ~~such~~ hospital;

64 (b) Require that any not-for-profit corporation become
65 qualified under s. 501(c)(3) of the United States Internal
66 Revenue Code;

67 (c) Provide for the orderly transition of the operation and
68 management of the ~~such~~ facilities;

69 (d) Provide for the return of the ~~such~~ facility to the
70 county, municipality, or district upon the termination of the
71 ~~such~~ lease, contract, or agreement; and

72 (e) Provide for the continued treatment of indigent
73 patients pursuant to the Florida Health Care Responsibility Act
74 and pursuant to chapter 87-92, Laws of Florida.

75 (3) Any sale, lease, or contract entered into pursuant to
76 this section prior to the effective date of this act must have
77 complied with the requirements of subsection (2) in effect at
78 the time of the sale, lease, or contract. It is the intent of
79 the Legislature that this section does not impose any further
80 requirements with respect to the formation of any for-profit or
81 not-for-profit Florida corporation, the composition of the board
82 of directors of any Florida corporation, or the manner in which
83 control of the hospital is transferred to the Florida
84 corporation.

85 (4) If ~~In the event~~ the governing board of a county,
86 district, or municipal hospital determines it is no longer in
87 the public interest to own or operate the hospital and elects to

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88 consider a sale or lease of the hospital, the board shall first
89 determine whether there are any qualified purchasers or lessees
90 of the hospital. In the process of evaluating any potential
91 purchasers or lessees ~~elects to sell or lease the hospital,~~ the
92 board shall:

93 (a) ~~Negotiate the terms of the sale or lease with a for-~~
94 ~~profit or not-for-profit Florida corporation and Publicly~~
95 advertise the meeting at which the proposed sale or lease will
96 be considered by the governing board of the hospital in
97 accordance with s. 286.0105; or

98 (b) Publicly advertise the offer to accept proposals in
99 accordance with s. 255.0525 and receive proposals from all
100 interested and qualified purchasers.

101
102 Any sale or lease must be for fair market value, and any sale or
103 lease must comply with all applicable state and federal
104 antitrust laws. As used in this section, the term "fair market
105 value" means the most likely price that the assets would bring
106 in a sale or lease in a competitive and open market under all
107 conditions requisite to a fair sale or lease, with the buyer or
108 lessee, and seller or lessor, each acting prudently,
109 knowledgeably, and in their own best interest, and with a
110 reasonable time being allowed for exposure in the open market.

111 (5) If the governing board decides to accept a proposal to
112 purchase or lease the hospital, the board's decision must be in
113 writing and clearly state the facts and findings that support
114 its decision to sell or lease the hospital. The facts and
115 findings must include, but are not limited to, whether the
116 proposal:

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117 (a) Represents the fair market value of the hospital;

118 (b) Constitutes the best use of the hospital and its
119 attendant facilities;

120 (c) Will have a positive effect on the reduction or
121 elimination of ad valorem or other tax revenues to support the
122 hospital; and

123 (d) Ensures that quality health care will continue to be
124 provided to all residents of the affected community, and in
125 particular the indigent, the uninsured, and the underinsured.

126 (6) A governing board of a county, district, or municipal
127 hospital may not enter into any sale or lease of a hospital and
128 its attendant facilities without first having received approval
129 of the sale or lease from the Attorney General pursuant to this
130 section.

131 (a) In order to receive such approval, the governing board
132 must file with the Attorney General a request for approval not
133 less than 120 days before the anticipated closing date of the
134 proposed sale or lease.

135 (b) The request to the Attorney General must include:

136 1. The name and address of all parties to the transaction;

137 2. The location of the hospital and all related hospital
138 facilities;

139 3. A description of the terms of all proposed agreements;

140 4. A copy of the proposed sale or lease agreement and any
141 related agreements, including, but not limited to, leases,
142 management contracts, service contracts, and memoranda of
143 understanding;

144 5. The estimated total value associated with the proposed
145 agreement, and the proposed acquisition price and other

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146 consideration;

147 6. Any valuations of the hospital's assets prepared in the
148 3 years immediately preceding the proposed transaction date;

149 7. An analysis of the financial or economic status of the
150 hospital and a report from any financial expert or consultant
151 retained by the governing board;

152 8. A fairness evaluation by an independent expert in such
153 transactions;

154 9. Copies of all other proposals and bids the governing
155 board received or considered in compliance with the procedures
156 required in subsection (4); and

157 10. Any other information requested by the Attorney
158 General.

159 (c) Within 30 days after the Attorney General receives the
160 request to approve the sale or lease of the hospital and all
161 required information, the Attorney General shall publish a
162 notice of the proposed sale or lease in one or more newspapers
163 of general circulation in the county where the main campus of
164 the hospital is located and in the Florida Administrative
165 Weekly. The notice must state that the Attorney General has
166 received notice of the proposed transaction, the names of the
167 parties involved, and the means by which persons may submit
168 written comments about the proposed transaction to the Attorney
169 General.

170 (d) The Attorney General may, during the course of any
171 proceeding required by this section, issue in writing and cause
172 to be served upon any person, a demand that the person appear
173 before the Attorney General and give testimony or produce
174 documents as to any matters relevant to the scope of the review,

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175 or issue written interrogatories, to be answered under oath, as
176 to any matters relevant to the scope of the review. The notice
177 must prescribe a return date that would allow a reasonable time
178 for the person to respond. If any person summoned to appear
179 fails to comply with the notice, the Attorney General may apply
180 to the appropriate court to seek enforcement of the subpoena.

181 (e) The Attorney General may contract with experts or
182 consultants to assist in reviewing the proposed agreement,
183 including, but not limited to, assistance in independently
184 determining the fair market value of the proposed transaction.
185 The Attorney General shall submit any bills for such contracts
186 to the acquiring entity. The acquiring entity shall pay such
187 bills within 30 days after receiving the bills.

188 (f)1. Within 20 days after the public notice is published
189 in the Florida Administrative Weekly, any interested person may
190 submit to the Attorney General a detailed written statement in
191 support of or in opposition to the sale or lease of the
192 hospital.

193 2. If any written statement of opposition has been
194 submitted, the governing board, the proposed purchaser, the
195 proposed lessee, or any interested person may submit a written
196 response to the Attorney General. Such statements must be
197 received by the Attorney General no later than 10 days after the
198 general comment period to the public notice ends.

199 3. When considering any opposition statement or response,
200 the Attorney General may request additional clarifying
201 information from the governing board or any other person.

202 (g) Sixty days after the date the public notice is
203 published, the Attorney General shall issue a report of his or

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204 her findings and the decision to approve, with or without
205 modification, or deny the sale or lease of the hospital. In
206 making his or her decision, the Attorney General shall determine
207 whether:

208 1. The proposed sale or lease is permitted by law;

209 2. The proposed sale or lease would result in the best use
210 of the hospital facilities and assets;

211 3. The proposed sale or lease discriminates among potential
212 purchasers or lessees by virtue of whether the proposed
213 purchaser or lessee is a for-profit or not-for-profit Florida
214 corporation;

215 4. The governing board of the hospital publicly advertised
216 the meeting at which the proposed transaction was considered by
217 the board in compliance with s. 286.0105;

218 5. Whether the governing board of the hospital publicly
219 advertised the offer to accept proposals in compliance with s.
220 255.0525;

221 6. The governing board of the hospital exercised due
222 diligence in deciding to dispose of hospital assets, selecting
223 the transacting entity, and negotiating the terms and conditions
224 of the disposition;

225 7. The procedures used by the governing board of the
226 hospital in making its decision to dispose of its assets were
227 fair and reasonable;

228 8. Any conflict of interest was disclosed, including, but
229 not limited to, conflicts of interest related to members of the
230 governing board and experts retained by the parties to the
231 transaction;

232 9. The seller or lessor will receive fair market value for

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233 the assets;

234 10. Charitable assets are placed at unreasonable risk if
235 the transaction is financed in part by the seller or lessor;

236 11. The terms of any management or services contract
237 negotiated in conjunction with the transaction are fair and
238 reasonable;

239 12. The acquiring entity made an enforceable commitment to
240 provide health care to the indigent, the uninsured, and the
241 underinsured and to provide benefits to the affected community
242 to promote improved health care; and

243 13. The proposed transaction will result in a reduction or
244 elimination of ad valorem or other taxes used to support the
245 hospital.

246 (h) The Attorney General shall publish notice of his or her
247 decision with respect to the request for transaction approval in
248 the Florida Administrative Weekly.

249 (7)(5) If In the event a hospital operated by a for-profit
250 or not-for-profit Florida corporation receives annually more
251 than \$100,000 in revenues from the county, district, or
252 municipality that owns the hospital, the Florida corporation
253 must be accountable to the county, district, or municipality
254 with respect to the manner in which the funds are expended by
255 either:

256 (a) Having the revenues subject to annual appropriations by
257 the county, district, or municipality; or

258 (b) Where there is a contract to provide revenues to the
259 hospital, the term of which is longer than 12 months, the
260 governing board of the county, district, or municipality must be
261 able to modify the contract upon 12 months notice to the

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262 hospital.

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264 A not-for-profit corporation that is subject to this subsection
265 and that does not currently comply with the accountability
266 requirements in this subsection shall have 12 months after the
267 effective date of this act to modify any contracts with the
268 county, district, or municipality in a manner that is consistent
269 with this subsection.

270 (8)~~(6)~~ Unless otherwise expressly stated in the lease
271 documents, the transaction involving the sale or lease of a
272 hospital shall not be construed as:

273 (a) A transfer of a governmental function from the county,
274 district, or municipality to the private purchaser or lessee;

275 (b) Constituting a financial interest of the public lessor
276 in the private lessee; or

277 (c) Making a private lessee an integral part of the public
278 lessor's decisionmaking process.

279 (9)~~(7)~~ The lessee of a hospital, under this section or any
280 special act of the Legislature, operating under a lease shall
281 not be construed to be "acting on behalf of" the lessor as that
282 term is used in statute, unless the lease document expressly
283 provides to the contrary.

284 (10)~~(8)~~ (a) If, whenever the sale of a public hospital by a
285 public agency to a private corporation or other private entity
286 pursuant to this section or pursuant to a special act of the
287 Legislature reflects that:

288 1. The private corporation or other private entity
289 purchaser acquires 100 percent ownership in the hospital
290 enterprise;

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291 2. The private corporation or other private entity
292 purchases the physical plant of the hospital facility and has
293 complete responsibility for the operation and maintenance of the
294 facility, regardless of ownership of the underlying real
295 property;

296 3. The public agency seller retains no control over
297 decisionmaking or policymaking for the hospital;

298 4. The private corporation or other private entity
299 purchaser receives no funding from the public agency seller
300 other than by contract for services rendered to patients for
301 whom the public agency seller has the responsibility to pay for
302 hospital or medical care;

303 5. The public agency seller makes no substantial investment
304 in or loans to the private entity;

305 6. The private corporation or other private entity
306 purchaser was not created by the public entity seller; and

307 7. The private corporation or other private entity
308 purchaser operates primarily for its own financial interests and
309 not primarily for the interests of the public agency,

310
311 such a sale shall be considered a complete sale of the public
312 agency's interest in the hospital.

313 (b) A complete sale of a hospital as described in this
314 subsection shall not be construed as:

315 1. A transfer of a governmental function from the county,
316 district, or municipality to the private corporation or other
317 private entity purchaser;

318 2. Constituting a financial interest of the public agency
319 in the private corporation or other private entity purchaser;

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320 3. Making the private corporation or other private entity
321 purchaser an "agency" as that term is used in statutes;

322 4. Making the private corporation or other private entity
323 purchaser an integral part of the public agency's decisionmaking
324 process; or

325 5. Indicating that the private corporation or other private
326 entity purchaser is "acting on behalf of a public agency" as
327 that term is used in statute.

328 Section 2. Section 395.3036, Florida Statutes, is amended
329 to read:

330 395.3036 Confidentiality of records and meetings of
331 corporations that lease public hospitals or other public health
332 care facilities.—The records of a private corporation that
333 leases a public hospital or other public health care facility
334 are confidential and exempt from the provisions of s. 119.07(1)
335 and s. 24(a), Art. I of the State Constitution, and the meetings
336 of the governing board of a private corporation are exempt from
337 s. 286.011 and s. 24(b), Art. I of the State Constitution when
338 the public lessor complies with the public finance
339 accountability provisions of s. 155.40(7) ~~s. 155.40(5)~~ with
340 respect to the transfer of any public funds to the private
341 lessee and when the private lessee meets at least three of the
342 five following criteria:

343 (1) The public lessor that owns the public hospital or
344 other public health care facility was not the incorporator of
345 the private corporation that leases the public hospital or other
346 health care facility.

347 (2) The public lessor and the private lessee do not
348 commingle any of their funds in any account maintained by either

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349 of them, other than the payment of the rent and administrative
350 fees or the transfer of funds pursuant to subsection (2).

351 (3) Except as otherwise provided by law, the private lessee
352 is not allowed to participate, except as a member of the public,
353 in the decisionmaking process of the public lessor.

354 (4) The lease agreement does not expressly require the
355 lessee to comply with the requirements of ss. 119.07(1) and
356 286.011.

357 (5) The public lessor is not entitled to receive any
358 revenues from the lessee, except for rental or administrative
359 fees due under the lease, and the lessor is not responsible for
360 the debts or other obligations of the lessee.

361 Section 3. This act shall take effect July 1, 2011.